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Article (Accepted Version)

Demetriou, Stavros (2019) From the ASBO to the injunction: a qualitative review of the anti-social behaviour legislation post-2014. Public Law (April). pp. 343-361. ISSN 0033-3565

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From the ASBO to the injunction: A Qualitative Review of the Anti-social behaviour Legislation post-2014

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Keywords: anti-social behaviour; crime; prevention; civil preventive orders; criminal behaviour orders.

Introduction

Since the mid-1990s anti-social behaviour (ASB) – and responses thereto – have played a prominent role in both political discourse and the criminal justice system. Amidst significant focus on problems associated with ASB, there emerged a shift in governmental policies towards risk management and preventive-led interventions.¹ Not only was this shift aimed at providing a means of early intervention, it also had the objective of moving towards a more victim-oriented approach.² The criminal justice system had previously been accused of ‘safeguarding the rights of the accused’ at the expense of paying sufficient attention to the harm suffered by victims and their needs.³ Hence, the need for a more balanced approach.

The cornerstone of the response to ASB was the Anti-Social Behaviour Order (ASBO), which was introduced under the Crime and Disorder Act 1998.⁴ In 2014, the enactment of the Anti-social Behaviour, Crime and Policing Act 2014 sought to revolutionise the law on ASB by providing a more effective and flexible legal framework to local communities.⁵ To this end, a raft of new measures were introduced. Some of these new measures, such as the Part 1 injunction, repealed and replaced pre-existing instruments, such as the ASBO, whereas others, such as the Community Trigger,⁶ are completely new.

This article offers new insights into the ASB regime by focusing on key developments under the 2014 Act. The article is structured in three parts. It begins by providing a critical analysis of the pre-2014 legal framework on ASB and the main challenges posed by it. Second, it offers a critical evaluation of the 2014 amendments focusing specifically on: i) the extended definition of ASB; ii) the repeal and replacement of both the ASBO and the post-conviction ASBO (CrASBO) by the injunction and the Criminal Behaviour Order (CBO) respectively; and iii) the introduction of positive obligations. Third, the article presents findings of an

empirical study conducted with local enforcement agents focusing on the impact that the abovementioned developments have had on the daily administration of ASB at a local level.⁷ Although there is extensive empirical research on the pre-2014 ASB framework,⁸ this article delivers the first empirical data (that the author is aware of) on the implementation of the 2014 amendments.

The findings of this study mitigate against some of the concerns raised about the potential misuse of the ASB legislation, e.g. the possibility of extending the scope of the law to purely innocent behaviour. This due to a number of factors, such as the limited availability of resources and the presence of a review procedure. The findings of this study, however, should be approached with caution since the implementation of the ASB measures can vary considerably across England and Wales. The possibility, therefore, of using these measures in an arbitrary manner cannot be dismissed. This article argues that the findings of this study could assist in the formulation of a new code of practice for local enforcement agents through which the misuse of the ASB legislation can be prevented whilst ensuring a more coherent implementation of the relevant tools and powers.

The initial response to anti-social behaviour

As a line of high profile cases suggests, such as that of Fiona Pilkington,⁹ ASB can range from everyday incivilities, such as noisy neighbours, to behaviour already proscribed by criminal law, such as criminal damage, and can have a devastating effect on people's quality of life.¹⁰ Certain kinds of ASB, especially those situated at the lower end of the spectrum, can be dismissed as too trivial to warrant any kind of formal legal intervention.¹¹ What is really problematic about ASB, though, is often the cumulative impact of the behaviour rather than the seriousness of each isolated incident. It was this need to protect the public from persistent low-level criminality that provided the impetus for the introduction of the initial ASB legal framework in the late 1990s.¹² ASB had been prominent in the Labour Party General Election campaign.¹³ While the 'New Labour' government was of the view that the link between ASB and criminality was undeniable, they did not believe that such conduct should be criminalised in its own right.¹⁴ Instead, a new hybrid method of social regulation was needed in order to enable the state to intervene at an early stage preventing ASB from escalating to serious criminality.¹⁵

The first major legislative attempt to tackle ASB as a specific concept was the ASBO under section 1 of the 1998 Act.¹⁶ The ASBO constituted a ‘two-step criminalisation process’ where a ‘civil prohibitory order’ was issued.¹⁷ If someone’s behaviour ‘caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself’, then one of the ‘relevant authorities’ listed under section 1, such as the police, could submit an application to court for the issue of an ASBO against that individual. If the court was satisfied that the perpetrator behaved in an anti-social manner, it could then approve the imposition of any restrictions deemed *necessary* on the perpetrator in order to prevent further ASB.¹⁸ Some of the most common types of restrictions imposed included curfews, exclusion from particular areas and ‘prohibitions on certain kinds of conduct’.¹⁹ Breach of the restrictions imposed without any reasonable excuse constituted a criminal offence carrying a maximum sentence of five years imprisonment and a fine.²⁰

The definition of ASB under the 1998 Act is also noteworthy: there was no need for the authority to prove that someone’s behaviour had actually caused ‘harassment, alarm or distress’ before being granted an ASBO. They needed only to prove that the perpetrator’s behaviour was *likely* to cause any of the abovementioned results.²¹ In effect, this meant that: (i) severe restrictions could be imposed on someone’s liberty even if his behaviour had not actually caused ‘harassment, alarm or distress’; and (ii) one could face a lengthy custodial sentence simply for breaching a civil order even where the underlying conduct was not itself criminal.²²

Although, in theory, the ASBO offered the necessary flexibility needed to address persistent low-level criminality and ASB, its introduction was fiercely opposed and criticised by many legal commentators.²³ Central to most of these criticisms was the significant magnitude of discretion afforded to courts and local enforcement agents regarding the implementation and the potential misuse of the ASBO. Duff, for instance, characterised the ASBO as a ‘pseudo-non-criminal’ measure, since it could be used as an alternative to criminal prosecution in order to address behaviour which should have been dealt with by the criminal law.²⁴ Others, such as Stephens, focused on ASB’s statutory definition and how broadly this could be interpreted.²⁵ Upon closer scrutiny of ASB’s statutory definition, it is evident that the law focused primarily on the impact or potential impact of someone’s behaviour on others rather than the actual nature of the behaviour in question. This meant that *any* kind of behaviour could potentially be regarded as anti-social regardless of its nature.²⁶ This also meant that victims, local enforcement agents and the courts played a crucial role in determining the true boundaries of the law in this area. As Stephen contends, the ambiguous boundaries of ASB’s

statutory definition allowed the scope of the law to be extended to behaviour that went well beyond what was originally intended by the legislature, expanding the net of social control ‘potentially [to] “all spheres of life”’.²⁷ It is for this reason that ASB should be interpreted with caution, since if left unrestrained it can result in situations where personal eccentricities, such as making sarcastic remarks,²⁸ could be regarded as anti-social simply because someone’s behaviour diverges from what is perceived as normal or goes beyond what is tolerated by others.²⁹

Clearly, the importance of the abovementioned criticisms regarding the potential misuse of the ASBO were heightened by the order’s hybrid nature. Based on the above analysis of the ASBO, it appears possible that this order could be used by local enforcement agents and courts as a means of criminalising *indirectly* what they regarded as anti-social since breach of the order constituted a criminal offence.³⁰

The second major statutory instrument introduced to address ASB as a specific concept was the CrASBO.³¹ In contrast to the ASBO, the CrASBO could only be imposed on those who were convicted of an offence and behaved in an anti-social manner.³² If the sentencing court was convinced that some additional steps were necessary to prevent the perpetrator from engaging in further ASB, then a CrASBO could be issued. The issue of a CrASBO was in addition to the sentence received for the triggering offence.³³ Similar to the ASBO, breach of a CrASBO without any reasonable excuse constituted a criminal offence.³⁴

The current law on anti-social behaviour

In line with then Coalition Government’s promise for a more flexible and effective legal framework, the 2014 Act brought significant changes in the law on ASB.³⁵ The most important amendment was the repeal and replacement of the ASBO with a new civil injunction. Part 1 of the 2014 Act consolidated a number of orders and injunctions, such as the ASBO and the ASB injunction, into a single multi-purpose injunction.³⁶ Although the two-step regulation model adopted by the ASBO was retained, the injunction is a purely civil mechanism. In contrast to the ASBO, breach of the injunction constitutes a civil ‘contempt of court’ and carries a maximum sentence of two years’ imprisonment and an unlimited fine.³⁷ Although breach of the injunction no longer constitutes an offence, the applicable standard of proof for breach proceedings is the criminal rather than the civil one.³⁸ This is attributed to ‘the potential severity of the penalties which the court can impose on respondents’.³⁹

Another important consequence of this shift towards a purely civil response is that those found in breach of the injunction cannot be arrested immediately unless a power of arrest is attached to the injunction.⁴⁰ This is a significant change from the ASBO, where the police could arrest an individual immediately if they breached their ASBO. This is not the case under the new scheme. The court examining the application for the issue of an injunction can attach a power of arrest only if it is satisfied that: (i) the respondent used or threatens to use violence against others; or (ii) that ‘there is a significant risk to others’ due to the respondent’s behaviour.⁴¹ If a power of arrest is attached to the injunction, then the police can arrest the perpetrator without any warrant.⁴² Otherwise, the police must apply for the issue of an arrest warrant.⁴³

As far as the CrASBO is concerned, this was repealed and replaced under Part 2 of the 2014 Act by the CBO. Although the CBO retains most of the CrASBO’s key features, it is worth examining some of the most important changes brought in by the 2014 Act. First, in order for a CBO to be issued the prosecution must prove beyond reasonable doubt that the offender has acted in an anti-social manner.⁴⁴ In contrast to this, in order for a CrASBO to have been issued, the court needed only to ‘consider that the offender has acted’ in an anti-social manner’.⁴⁵ Second, a CrASBO could only be used if the court examining the application was satisfied that this was a *necessary* means to protect members of the public from further ASB.⁴⁶ In order for a CBO to be issued the court must be satisfied that the ‘order will help in preventing the offender from engaging’ in further ASB.⁴⁷ The 2014 Act, therefore, appears to *lower* the required threshold that must be met in order for a CBO to be imposed.

Another major development has been the introduction of positive obligations. Under the 1998 Act an ASBO or a CrASBO could only prohibit a person from doing anything mentioned in the order. If there was, for example, evidence to suggest that the perpetrator, who was an alcoholic, was congregating with others in the town centre after midnight causing ASB, then the court could impose a home curfew on him during night hours in order to prevent him from behaving in the same manner in the future. The imposition of restrictions alone, however, do not necessarily address the underlying causes of ASB and thus provide permanent relief to local communities.⁴⁸ Indeed, evidence suggests that the imposition of exclusion zones or other forms of prohibitions often led to the ‘displacement of crime and anti-social behaviour both within’ the same town and nearby places.⁴⁹ Consequently, the introduction of positive obligations can be regarded as an explicit acknowledgement by the Government that ASB is sometimes the direct result of deeper causes, not mere defiance of the law.⁵⁰ The perpetrator,

for instance, can be prohibited from entering the town centre and at the same time ordered to attend an alcohol-related rehabilitative programme.

Although the introduction of these positive requirements has the potential of addressing the underlying causes of ASB, it also raises concerns as to the severity of the constraints placed on the perpetrators' liberty. This criticism is even more notable in light of the conditions that need to be met in order for an injunction to be issued. As the 2014 Act appears on the statute book, the issue of an injunction seems much easier compared to the ASBO. Under the 1998 Act, an ASBO could only be issued if the court examining the application was satisfied that the order was 'necessary to protect relevant persons from further' ASB. Under the 2014 Act, the court examining an application for the issue of an injunction needs only to consider 'it just and convenient to grant the injunction for the purpose of preventing' further ASB.⁵¹

Finally, it is worth mentioning that the enactment of the 2014 Act also had an impact on the statutory definition of ASB. ASB is defined under section 2 of the 2014 Act which draws a distinction between two types of ASB, housing and non-housing related. The former includes behaviour which is 'capable of causing nuisance and annoyance' in a housing-related context.⁵² As to the latter, section 2 makes reference to behaviour which 'caused or was likely to cause harassment, alarm or distress' or 'capable of causing nuisance and annoyance' to others.⁵³ Section 2 evidently expands the ambit of the ASB measures by allowing for the imposition of an injunction or of a CBO in cases where the perpetrator's behaviour has or is likely to have a negative impact only on individuals living in the same household as himself. This expansion in the scope of the ASB legislation can be attributed to the consolidation of a number of legal instruments, such as the ASB injunction, under Part 1 of the 2014 Act.⁵⁴

Implementing anti-social behaviour measures at a local level

Although the move to a purely civil injunction appears to mitigate against some of the concerns raised about the ASBO, under the 2014 Act a significant magnitude of discretion is still afforded to local enforcement agents and courts regarding both the scope of the law in this area and the nature of the obligations that can be imposed on those against whom the ASB measures are used. It is, therefore, essential to study empirically the implementation of these measures in order to: i) examine how these are used in practice; and ii) to investigate whether the 2014 amendments managed to address the abovementioned concerns raised about the potential misuse of these measures.

In the remainder of this paper findings of a two-year empirical study conducted on the implementation of the 2014 amendments will be presented.⁵⁵ These are the first empirical data (that the author is aware of) on the 2014 amendments and shed light on: i) how ASB is being conceptualised at a local level; and ii) what impacts the recent changes in legislation are having on the daily administration of ASB.

Methodology

The data presented here were collected between May 2015 and April 2016.⁵⁶ As part of this study, semi-structured interviews with police officers and local practitioners⁵⁷ from two counties in England were conducted.⁵⁸ In total, 29 interviews were conducted in both areas, i.e. 19 in Site A and 10 in Site B. During this study, 16 local practitioners and 13 police officers were interviewed. Due to the criticisms raised about the potential misuse of the ASB measures, a conscious decision was taken not to reveal the true identity of the interviewees, their institutions or the actual sites investigated.⁵⁹ To this end, the participants' true identity was replaced by a three-part unique reference code to protect them from the consequences that may flow from their participation in this study in the future.⁶⁰ The first part of the code, e.g. 'Int.1', represents a random number assigned to each research participant. The second part of the code, e.g. 'PO', refers to the participant's occupation, i.e. 'PO' and 'LP' for police officers and local practitioners respectively. The final part of the code refers to the site where the interview took place, e.g. 'Site A'.

Each area was purposefully selected based on the level of ASB experienced.⁶¹ The main objective of this study was to collect data from an area which experienced high levels of ASB (Site A) and then compare this to the data collected from an area which experienced significantly lower levels of ASB (Site B).⁶² The purpose of this was to 'capture and describe the central themes that cut across a great deal of variation'.⁶³ It was also intended for research participants to have a daily interaction with ASB and be responsible for the implementation of the legislation at a local level.

The data collected were analysed thematically using NVivo. Through the initial analysis of the data collected key concepts were identified.⁶⁴ These concepts were given short titles in order to categorise important pieces of information relating to this study.⁶⁵ This initial coding led to a more meaningful interpretation of the data.⁶⁶ This was followed by a thematic analysis of the data through which a number of themes relating to the implementation of the

2014 amendments were identified. The interpretation of these themes and their correlation led to a deeper understanding of how the ASB measures were used at a local level.⁶⁷

Research findings

The findings presented in this paper are categorised as follows:

- i) the way ASB is conceptualised at a local level;
- ii) the shift to a purely civil injunction; and
- iii) the introduction of positive obligations.⁶⁸

Conceptualising anti-social behaviour

One of the most concerning features of the pre-2014 legal framework was the statutory definition of ASB which, according to its critics, expanded the net of social control to everyday ‘trivial, sub-criminal, or nuisance behaviour’.⁶⁹ Hence, the extended definition of ASB under the 2014 Act, raises additional concerns as to the scope of the law in this area. The ambiguous limits of the statutory definition were confirmed when research participants were asked about how they would personally define ASB. In both sites, the majority of the participants felt that it was quite difficult to conceptualise ASB precisely or provide examples of behaviour that would definitely fall within the ambit of the law. As one police officer noted ‘almost everything fits under the ASB legislation’ (Int.12-PO-Site B). This was further evidenced by the participants’ responses when asked to provide examples of behaviour that could possibly be regarded as anti-social in their own localities. It was clear from the examples provided that ASB could range from behaviour that on face value appears to be part of everyday life, to conduct which is already proscribed by criminal law. A local practitioner noted:

There are a lot of types of behaviour that we do not like or as a society we say are unacceptable such as noise, nuisance, it could be drug dealing for some people, substance abuse for other people who find it quite upsetting and anti-social (Int.4-LP-Site A).

As far as the lower end of the spectrum is concerned, it was clear that ASB covers primarily behaviour that appears to be part of everyday social interaction and not directly regulated by law, such as ‘drinking [alcohol and] ... being loud’ whilst being in a public place (Int.3-LP-Site A). Although the use of the ASB measures to address street drinking can be criticised for

widening the net of social control to what appears to be a lawful activity,⁷⁰ evidence from this study suggests that local enforcement agents will take into consideration a number of factors before labelling someone's behaviour as anti-social.

(i) *Impact and persistence*

Most interviewees highlighted the fact that while some activities appear, in isolation, to be of a trivial nature, their cumulative effect on people's lives can in fact be devastating. On many occasions, ASB 'will determine where people want to live, it will determine their friendships, their family [and] it can put strains on relationships' (Int.16-LP-Site A).

Although 'there [was] no specific number of incidents' required in order for local enforcement agents to classify someone's behaviour as anti-social (Int.19-PO-Site A), it was clear from the data collected that either the perpetrator's behaviour must have a *significant* effect on victims' lives 'over a period of time' or that its impact had been so severe that *immediate* action was needed (Int.24-LP-Site A). As one of the participants put it:

We are going to review [each incident] and if we think that it is too high or has been going on for a long time and nothing that we have done seems to have worked...we will then look at enforcement (Int.19-PO-Site A).

Such testimonies suggested that a key factor that is considered when determining whether something should be classified as ASB is the actual or potential *impact* on others, which is often marked by *persistent* and *repetitive* conduct. This approach was in line with the Home Office's guidelines regarding the way ASB is to be conceptualised at a local level. According to these guidelines, 'the right response in each case will depend on a range of factors, but most importantly, on the needs of the victim and the impact the behaviour is having on their lives'.⁷¹

(ii) *Discretion and common sense*

According to half of the interviewees, the focus on the impact that certain kinds of behaviour have on others also helps to explain why similar activities can be treated differently, i.e. as non-anti-social, depending on the context in which they take place. One police officer explained:

Having a house party where no one can hear it for three miles is not going to be anti-social. But if you put that same incident ... in the middle of a town centre it is likely to cause harassment, alarm or distress ... So, same people doing the same thing, different locations, massively different impact (Int.26-PO-Site A).

This need for a flexible legal framework was further evident when participants were asked about the 2014 amendments with regards to the way ASB is defined, especially its expansion to housing-related behaviour. As many of the participants noted, the ‘same household as himself’ clause in the 1998 Act caused ambiguities and ‘grey areas’ especially when the alleged incident of ASB took place in hostels and houses of multiple occupancies (Int.5-LP-Site A). The abolition of this clause was regarded as a positive development by most of the research participants who perceived this as a necessary amendment since ‘it is broadening the net...the behaviour can be monitored wider’ and this enables them to shape the scope of the law based on the issues faced locally (Int.6-LP-Site A).

The great magnitude of discretion afforded to enforcement agents regarding the way ASB is to be conceptualised seemingly conforms to the Government’s promise for a new legal framework that will be capable of ‘provid[ing] faster, more visible justice for victims and communities...and that act[s] as a real deterrent’.⁷² For the majority of the participants this flexibility in the statutory definition, particularly the ‘likely to cause’ clause, was vital for the protection of vulnerable victims since it enabled them to adopt a more proactive approach towards ASB. This allowed local enforcement agents to intervene at an early stage and ‘stop the anti-social behaviour rather than leave them to escalate’ (Int.6-LP-Site A). This does not necessarily mean that local enforcement agents applied for the issue of an injunction in cases where someone’s behaviour was only *likely* to cause ‘harassment, alarm or distress’. To be used in this way would have constituted a significant and possibly unjustifiable expansion of the scope of the law in this area.

Notwithstanding the significant magnitude of discretion afforded to local enforcement agents regarding the scope of the law in this area, most of the participants highlighted the need for their ‘response to be measured’ and to focus on behaviour that does not fall within the realm of everyday social interaction (Int.11-PO-Site B). For instance, one local practitioner argued:

If it is simply that someone is having children and their children are using their own back garden and they are causing nuisance to their

neighbours because they do not want to hear children, then that is not anti-social behaviour ... That is living sound (Int.16-LP-Site B).

Although the majority of the participants held that a certain degree of flexibility is necessary, four interviewees (two from each site) highlighted the risks associated with the broad drafting of the statutory definition by characterising it as ‘frighteningly subjective’ (Int.8-LP-Site B). As a local practitioner put it, ‘it is becoming potentially quite powerful for local authorities for addressing behaviours that they just decide they do not like’ (Int.4-LP-Site A). This, of course, can result in the inconsistent implementation of the relevant tools and powers across England and Wales. On this view, it appears possible for a particular kind of behaviour to be regarded as anti-social in certain parts of the country whereas in others to go unnoticed. It also possible for these measures to ‘be used inappropriately and disproportionately against people who maybe do not have a voice, [such as] members of the street community’ (Int.4-LP-Site A). Clearly, the above criticisms raised by some research participants, pose a number of practical and normative questions about the potential implementation of the ASB measures at a local level and how this can be prevented without undermining their flexibility.

(iii) *Focusing on victims and their experiences*

In Site A, there was strong evidence to suggest that victims’ perceptions were central to the way ASB was conceptualised. It was evident that if the complainant was negatively affected by someone’s behaviour or if they deemed their behaviour as anti-social, then the investigation of this incident would start from the premise that it constituted ASB. The next testimony is illustrative of this victim-oriented approach adopted in Site A: ‘it is a victim led, victim witness led process. When a victim reports to us that they have felt harassment, alarm or distress then that very much informs whether we are going to take it on as a case’ (Int.5-LP-Site A). A similar approach was also adopted by the relevant police force. According to one of its members ‘a common theme within policing is...that it is actually better to deal with something as it has been identified rather than to justify why it is not anti-social’ (Int.28-PO-Site A).

The above is not to suggest that local enforcement agents structured their investigation and response solely on the alleged victim’s perception of an incident in the absence of any other credible evidence. As one of the participants pointed out ‘if we obtain evidence ... that suggests otherwise we will then make adjustments to that [effect]’ (Int.21-PO-Site A). Instead, is to illustrate the importance attributed in Site A to victims and the possible adverse

consequences that persistent low-level criminality and ASB can have on them. This is in line with the Government's promise to depart from the 'one size fits all' approach of the past.⁷³ The views of the victims, therefore, should not be dismissed outright since what might appear to be of a trivial nature, can have a devastating effect on the complainant's life.⁷⁴

As far as Site B was concerned, three out of the ten participants from this site noted that they would take into consideration whether the alleged victim perceived a particular kind of behaviour as anti-social. However, the data collected from this area suggests that a victim's perception of an incident would not affect significantly, or at least not to the extent that this did in Site A, the way local enforcement agents conceptualise ASB. As noted by a police officer, 'if we are getting repeated calls about the same thing...we are going to look at it to determine [whether we] actually need to do something about it because there is a risk to the public' (Int.14-PO-Site B).

Although the adoption of a more victim-oriented approach by local enforcement agents echoes the Government's promise of 'putting victims first' and might prevent cases similar to the one of Fiona Pilkington,⁷⁵ recourse to this approach should not be viewed as a panacea in addressing ASB. As Duggan and Heap maintain, victims and their needs can be used as a Trojan horse for the adoption of a more punitive response to ASB, e.g. the imposition of tougher restrictions on the perpetrators' liberty.⁷⁶ Notwithstanding the adoption of a more punitive (and potentially unjustified) response to ASB, what is also problematic about a victim-oriented approach is that 'the voice [victims] are given is not necessarily theirs [since they have] been carefully stage-managed to ensure that it fits the political message of which it now forms a part'.⁷⁷ Victim and their alleged needs can, therefore, be used by local enforcement agents as a means of justify their wide and arbitrary interpretation of ASB's statutory definition.

The concerns expressed by Duggan and Heap are further justified by the significant variations in communities' tolerance levels reported particularly in Site B. Evidence collected from this site suggests that people in more affluent areas and/or areas with lower crime rates tend to be less tolerant towards ASB. In contrast, in areas with high crime rates people tend to report only the most serious incidents of ASB 'because they have to deal with [criminality] on a daily basis...it becomes part of their normal lives' (Int.14-PO-Site B). The following statement is illustrative of a number of responses given by many research participants in Site B through which these variations were highlighted: 'you will find this in the more affluent areas. The lowest level of anti-social behaviour will be reported there' (Int.13-PO-Site B). It

follows that the way different social groups perceive and approach ASB can vary considerably since this is influenced by their socio-economic background. This becomes particularly problematic where a strict victim-oriented approach, i.e. no other factors are taken into consideration in determining whether someone's behaviour is anti-social, is adopted by local enforcement agents. As discussed above, this could not only lead to the unjustifiable expansion of the net of social control, but it can also result in the targeting of certain social groups. It follows, therefore, that whilst victims' voices should be heard, their needs and perceptions should not be the sole factor determining whether someone's behaviour is anti-social.

(iv) *Availability of resources*

The data collected from both sites suggested that the implementation of the ASB legal framework relied heavily on the amount of resources available at a local level. In nineteen interviews the lack of resources and/or the costs of implementation of these measures were highlighted as one of the main factors that local enforcement agents would take into consideration when determining whether a particular incident should be regarded as anti-social. For instance, one local practitioner from Site A noted that:

Because the resources are becoming a little bit more stretched we try to prioritise the cases where there is a personal harm of anti-social behaviour. We try to move away from the neighbour disputes and that sort of thing (Int.20-LP-Site A).

As the above account illustrates, the limited availability of resources has led local enforcement agents to concentrate on the most serious incidents reported to them. As one police officer pointed out, 'there has to be a realistic understanding...we have reductions in the number of police officers. We have to focus on risk and harm' (Int.11-PO-Site B). The foregoing testimonies accurately reflect a number of responses provided by participants who emphasised that the limited resources available for tackling ASB and criminality forced them to focus on behaviour that had a significant and detrimental impact on people's quality of life rather than on everyday incivilities, such as minor neighbour disputes. The need to prioritise resources, however, does not necessarily prevent the inconsistent application of the ASB tools and power. In areas with more resources, for instance, local enforcement agents might decide to interpret ASB more widely. This is one of the main reasons why this article advocates for the formulation of a new code of practice through which a more principled and coherent

implementation of the relevant tools and powers can be achieved, rather than one which is contingent on the availability of resources at a local level.⁷⁸

(v) *Review procedure*

Collectively the interview data suggested that the main factor that practitioners used to determine whether someone's behaviour was to be classified as anti-social is its *impact* on other members of the community. The findings of this research also echo the findings of previous studies which revealed both an overlap between ASB and criminality and the possibility of regulating otherwise permissible legal activities through the implementation of these measures.⁷⁹ This was an expected discovery primarily due to the way ASB is defined under section 2 of the 2014 Act. As discussed earlier, one of the main criticisms against ASB's statutory definition is its reliance on the impact or *likely* impact of someone's behaviour rather than on the nature of the conduct in question. Nonetheless, it was evident from the data collected that the relevant measures were only utilised in serious cases where the behaviour in question was *impactful* and most commonly *repetitive*.

This finding is further strengthened by the fact that in most cases, the initial decision to classify someone's behaviour as anti-social 'goes through several layers of review' (Int.18-PO-Site A). As a police officer put it, 'it is not just one officer on their own' who decides whether someone's behaviour is anti-social (Int.12-PO-Site B). Rather, as the following testimony elucidates, cases were constantly reviewed both internally and externally:

We have discussions on a weekly basis about the behaviour ... whether it is something that falls within the remit of our team. Then we go to wider city meetings, the multi-agency assessment and targeting meetings. So, we kind of get wider city consent as to what anti-social behaviour is (Int.2-LP-Site A).

Taken as a whole, it was evident from the interviews conducted in both sites that behaviour is not arbitrarily labelled as anti-social. The concerns raised above, therefore, regarding the expansion of the net of social control to 'all spheres of life' through the implementation of ASB measures were not borne out by the evidence. The broad and ambiguous drafting of ASB's statutory definition though still enables local enforcement agents to use the law in an arbitrary manner. Consequently, it is imperative to formulate mechanisms through which it can be ensured that the implementation of the law will not result in the unjustifiable expansion of the

net of social control. As explained below, the most viable option is the formulation of a code of practice through which a more consistent implementation of the law can be achieved whilst retaining the flexibility of these measures. To this end, the data presented above can be scrutinised in order to identify principles upon which this new code of practice should be structured.

The move to a purely civil injunction

Although the ASBO's hybrid nature was one of its most contentious and heavily criticised features academically, its abandonment attracted mixed responses from the research participants. For the majority of the participants the move to a purely civil injunction was unlikely to have any significant effect on the daily administration of ASB. According to the data collected during this study, there are three possible explanations for this. First, the majority of interviewees noted that the ASBO was just one out of the many tools in their arsenal in dealing with ASB and criminality. As one of the interviewees noted: 'we have got offences with which we can still deal with people and I am not overly concerned that the breach is not an offence anymore as long as we can still deal with it effectively' (Int.13-PO-Site B).

Secondly, reference was made in both areas to the way courts used to deal with those who were found in breach of their ASBOs. Two participants from Site B argued that the shift to a civil injunction was unlikely to have any impact on the way they were dealing with ASB since the ASBO 'was anyway a toothless tiger' (Int.14-PO-Site B). According to one police officer, 'under the old legislation we would go back [to court] after breaches time after time and nothing would happen to that person. So, I do not think that it particularly concerns me' (Int.14-PO-Site B). In contrast to this, two interviewees from Site A noted that they were 'quite confident' (Int.4-LP-Site A) that 'if you are having lots of breaches the next time they go back to court it will obviously be taken a lot more seriously' (Int.7-LP-Site A).

Thirdly, for some interviewees this shift towards a purely civil injunction was unlikely to have any real effect on certain individuals. According to them, the main reason for this was that some perpetrators would simply not comply with a court order or an injunction regardless of the possible consequences. One interviewee noted that 'you are still going to get the twenty per cent who do not care. They do not care because they have other issues' (Int.8-LP-Site A).

Ten interviewees expressed their concerns as to whether a purely civil response will be as effective as the ASBO used to be in dealing with ASB. Many of the participants focused on

the effectiveness of the ASBO as a ‘bargaining tool for working with a person and getting them to understand the consequences of their behaviour’ (Int.4-LP-Site A). It had been suggested that the criminal nature of the ASBO’s second limb acted as a leverage for the perpetrators to change their behaviour. Consequently, this shift to a purely civil method of regulation means that those who act in an anti-social manner are no longer provided with ‘prudential reasons for desistence’.⁸⁰ As one police officer explained ‘it is a real shame...I think it has taken some of the bite away from the legislation’ (Int.12-PO-Site B).

Another cause for concern for many participants was the fact that a power of arrest is not automatically attached to an injunction. According to some participants, obtaining a power of arrest is not as easy as it might appear to be:

In reality it will be unlikely to get a power of arrest attached to the injunction for him despite him having more aggravated offences on his record than anybody else in our city. He is someone who actually if anything is to work is the imminence of arrest and significant sanction. An injunction would not do that (Int.1-LP-Site A).

The abovementioned concerns in conjunction with the limited amount of resources available led many of the participants to express their reservations as to whether they should be applying for the issue of an injunction. According to one of the interviewees ‘it makes me think what the point is. One of the things is that it costs a lot of money and if it is not a criminal offence, then for what purpose?’ (Int.3-LP-Site A). This finding was further supported by a number of other testimonies based on which local enforcement agents are now more focused on getting a CBO rather than an injunction. As one interviewee pointed out, ‘I think that there is more pressure to get a criminal order because: (a) you have the power of arrest more or less kind of automatic; and (b) in theory the court will cost less’ (Int.15-PO-Site A).

This focus on the post-conviction order is not a new phenomenon. Between 2002 and 2013 the number of CrASBOs issued was almost twice the number of ASBOs.⁸¹ The above finding, however, raises fundamental questions about the administration of justice which appears to be driven to a large extent by the amount of resources available at a local level rather than by principles of justice.

Most importantly, it undermines (at least to some extent) the preventive nature of the injunction which is premised on the assumption that the state should be able to address ASB at an early stage in order to prevent it from escalating to serious criminality.⁸² The focus on the

CBO, however, means that local enforcement agents will have to wait for someone to be convicted of an offence in order to address their ASB. This is in line with the findings of Lewis *et al* who found that the implementation of the ASB measures ‘refute[s] the logical sequencing of prevention’ because some of those against whom these measures were used had ‘already engaged in serious or persistent offending’.⁸³

The introduction of positive obligations

The introduction of positive obligations under the 2014 Act was regarded by the Government as a necessary addition since ‘in many cases, there are underlying causes of the anti-social behaviour’.⁸⁴ This study found that the majority of the interviewees perceived this addition as a positive development, since it enables them to work with the perpetrators to address the underlying causes of their behaviour. As one of the interviewees pointed out ‘in a lot of cases you can only address anti-social behaviour if you address the underlying causes...and sometimes I think people need to be pushed or even ordered to seek help’ (Int.2-LP-Site A). Moreover, some interviewees noted that positive obligations can also be used to repair the harm caused to victims by, for instance, ‘mak[ing] someone clean up street graffiti’ (Int.26-LP-Site A).

According to some of the participants, positive obligations were already used through acceptable behaviour agreements. A police officer explained that these agreements were not just used to put restrictions on the perpetrator’s behaviour, but they were used as a means of referring people to ‘juvenile services or attend this club six times a week’ (Int.29-PO-Site A). The foregoing testimony is consistent with the findings of Crawford *et al* who found that positive obligations were already imposed ‘by way of support services to be accessed by the individual’.⁸⁵ Nevertheless, it was evident from the testimonies provided that for the majority of the participants the introduction of positive obligations is a step in the right direction.

Clearly, positive obligations can be utilised to provide permanent relief to those affected by ASB whilst offering to the perpetrator the necessary support needed to address the underlying causes of their behaviour. It is imperative though to be mindful of: i) how restrictive these obligations can be on the perpetrator’s liberty; and ii) the challenges (both normative and practical) posed by paternalistic interventions of this kind.⁸⁶

Further reflections

Despite the criticisms raised about the extensive magnitude of discretion afforded to courts and local enforcement agents regarding the scope of the ASB legislation and how this can be misused, the 2014 amendments did little to mitigate against these concerns. In fact, the 2014 Act extended the potential scope of the law even further whilst also allowing for the imposition of positive obligations. Based on the data collected though, the behaviour dealt with through these measures was *impactful* and in most of the cases *persistent*. This was due to the fact that the decision to classify someone's behaviour as anti-social was informed by a number of factors which partly compensated for the apparent broadness of ASB's statutory definition. Some of these factors, such as the limited availability of resources, were beyond the research participants' control. Others though, such as the presence of a review procedure (both internal and external), were the product of good practice and they were equally instrumental in terms of limiting the scope of the law to behaviour that really had an impact on people's quality of life.

That notwithstanding, the 2014 Act still provides a significant magnitude of discretion to local enforcement agents as to the scope of the law in this area and the implementation of the relevant tools and powers. It is, therefore, possible for the implementation of these measures to vary considerably across England and Wales. Hence, the findings of this study might not accurately reflect how these measures are used in other areas. It should also be borne in mind that this study examined the implementation of the 2014 amendments from an enforcement perspective, i.e. it interviewed local enforcement agents, not victims and/or those against whom these measures are used. Perpetrators, for instance, might argue that the relevant legislation was used in an arbitrary manner against behaviour which is part of everyday human interaction. Similarly, victims might highlight the need for a more proactive response to ASB.

The findings of this study mitigate against some of the concerns raised regarding the potential scope of the ASB legislation. The broad and ambiguous drafting of the relevant statutory provisions, however, necessitate some kind of response by the Government and/or the legislature, e.g. legal reform, through which clarity and consistency can be achieved across England and Wales. It is argued that the most viable option would be formulation of a code of practice for local enforcement agents.⁸⁷ Through this code of practice further guidance can be provided to local enforcement agents regarding the scope of the law in this area and what measures must be put in place at a local level in order to restrict the potential for misuse.

Before elaborating further on the content of the proposed code of practice, it is imperative to explain why legislative reform is not the most viable option. It should be borne in mind that the ASB legal framework has recently been reformed. Further legislative reform, therefore, at this stage appears to be unrealistic. Even if there was appetite for reform, this would require, for instance, the legislature to limit the scope of the law to behaviour that actually has a significant and detrimental effect on people's lives rather than on one which might do so in the future. This, however, could significantly undermine local enforcement agents' ability to deal swiftly and effectively with certain kinds of ASB. Evidently, the current definition of ASB provides local enforcement agents with the necessary discretion and flexibility needed to address a range of behaviour that negatively affect their communities. For these reasons, it is argued that the most viable option is the formulation of a new code of practice for local enforcement agents. To this end, the findings of this study can be utilised in order to identify principles/mechanisms, e.g. the need for internal and external review procedures, which can limit the scope of the law to behaviour which is really impactful and persistent whilst retaining a flexible legal framework.

The formulation of a new code of practice is not a panacea in preventing the misuse of the ASB tools and powers. Instruments of this kind are advisory and not legally binding. Moreover, the fact that the proposed code of practice is intended to be a universally applicable instrument means that it might fail to take into account the specificities of each area, e.g. the amount of resources available. Nonetheless, its successful integration into existing ASB policies is capable of bringing clarity and consistency to the implementation of the ASB tools and powers whilst preventing their potential misuse.

Conclusion

This article presented the first empirical data on the implementation of the 2014 amendments on the law on ASB. The 2014 Act was the first major legislative attempt to reform the 1998 Act, the initial legal framework on ASB. Despite the criticisms raised about the ambiguous scope of the law under the 1998 Act, the 2014 amendments extended the potential ambit of the ASB legislation even further. There was strong evidence from this study to suggest, however, that local enforcement agents take into consideration a number of factors in determining whether someone's behaviour should be classified as anti-social. These factors tend to restrict the ambit of the law to behaviour which was *impactful* and most commonly *repetitive*.

Although at face value the findings of this study appear to be encouraging, the relevant legislation can still be misused due to the significant magnitude of discretion afforded to local enforcement agents. For this reason, it has been argued that a new code of practice should be formulated regarding the implementation of the ASB measures. The findings of this study can assist in the formulation of the proposed code of practice since they do not only provide insights on the implementation of the 2014 amendments, but they also identify mechanisms through which the abuse of these measures can be prevented.

As far as the shift to a purely civil injunction is concerned, this appears to assuage some of the criticisms raised about the ASBO and how this could be used to criminalise *indirectly* certain kinds of behaviour. Evidence from this study, however, suggest that this shift to a purely civil response was approached with great deal of scepticism by many local enforcement agents who expressed their reservations as to the overall effectiveness of the injunction in terms of preventing further ASB. Looking forward, given the limited availability of resources and the reservations expressed by local enforcement agents about this shift to a purely civil response, it is interesting to examine whether this will result in the *de facto* abolition of the injunction.

* The author would like to thank John Child, Heather Keating, Colin King, Tanya Palmer and Mark Walters for their very helpful comments on earlier versions of this article.

¹ G. Pearson, "Hybrid Law and Human Rights – Banning and Behaviour Orders in the Appeal Courts" (2006) 27 *Liverpool Law Review* 125-145, 131.

² Home Office, *Rebalancing the Criminal Justice System in Favour of the Law-Abiding Majority* (Home Office 2006), p.2.

³ Home Office, fn.2 above, 2.

⁴ Section 1 of the 1998 Act.

⁵ House of Commons, *Anti-social Behaviour, Crime and Policing Act 2014: Explanatory Notes* (House of Commons, 2013) HL Bill 52, para. 11.

⁶ The Community Trigger was introduced under Part 6 of the 2014 Act to enable victims to initiate an investigation into a potential incident of ASB. See: Home Office, *Empowering Communities, Protecting Victims Summary Report on the Community Trigger Trials* (Home Office, 2013); K. Brown, "The Community Trigger for Anti-social Behaviour: Protecting Victims or Raising Unrealistic Expectations?" (2015) *Criminal Law Review* 488.

⁷ All research participants are collectively referred to as local enforcement agents. Non-police officers (e.g. ASB officers working for local Community Safety Unites) are referred to as local practitioners.

⁸ See, for example: L. Koffman, "The Use of Anti-Social Behaviour Orders: An Empirical Study of a New Deal for Communities Area" (2006) *Criminal Law Review* 593; J. Donoghue, *Anti-social Behaviour Orders: A Culture of Control?* (Hampshire: Palgrave, 2010); S. Lewis and others, "Nipping Crime in the Bud? The use of Antisocial Behaviour Interventions with Young People in England and Wales" (2017) *British Journal of Criminology* Vol.57(5) 1230-1248.

⁹ Fiona Pilkington and her family were subjected to prolonged ASB. This eventually led her to set fire to her car killing herself as well as one of her children. Although Fiona Pilkington complained on numerous occasions to the police about the prolonged harassment she and her family experienced, the Leicestershire Police failed to classify them as a vulnerable family and their neighbourhood as an 'anti-social behaviour "hot spot" and ... it was [therefore] never targeted for a more proactive police response'. See: Independent Police Complaints Commission, *IPCC report into the contact between Fiona Pilkington and Leicestershire Constabulary 2004 – 2007* (IPCC, 2009).

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- ¹⁰ Home Office, *More Effective Responses to Anti-Social Behaviour* (Home Office, 2011), p. 8.
- ¹¹ A. Cornford, "Criminalising Anti-social Behaviour" (2012) *Criminal Law and Philosophy* Vol. 6, 1-19, 4.
- ¹² S. Macdonald, "The Principle of Composite Sentencing: Its Centrality to, and Implications for, the ASBO" (2006) *Criminal Law Review* 791, 792.
- ¹³ Labour Party, *A Quiet Life: Tough Action on Criminal Neighbours* (London: Labour Party, 1995).
- ¹⁴ Labour Party, fn.13 above, p.3.
- ¹⁵ A. Crawford, "Governing Through Anti-Social Behaviour" (2009) *British Journal of Criminology* Vol. 49 810-831, 818.
- ¹⁶ Prior to the introduction of the ASBO local authorities could and still can make use of the powers granted to them under section 2 of the Noise Act 1996 in order to deal with nuisance behaviour. Under section 152 of the Housing Act 1996, an ASB injunction could be issued against someone whose behaviour had caused 'nuisance and annoyance' in residential premises. Moreover, an array of provisions in the Public Order Act 1986, such as section 5, enables law enforcement agents to tackle more serious kinds of public disorder. None of these measures, however, was explicitly designed to address what later became known as ASB.
- ¹⁷ A. Simester and A. von Hirsch, *Crimes, Harms, and Wrongs: On the Principles of Criminalisation* (Oxford: Hart Publishing, 2011), p. 213.
- ¹⁸ Section 1(1)(b) of the 1998 Act.
- ¹⁹ C. Bakalis, "ASBOs, Preventative Orders and the European Court of Human Rights" (2007) *European Human Rights Law Review* 427, 427.
- ²⁰ Section 1(10) of the 1998 Act.
- ²¹ Section 1(1)(a) of the 1998 Act.
- ²² G. Pearson, fn.1 above, 128.
- ²³ For a critique of the ASBO see: A. Ashworth and L. Zedner, "Prevention Orders: A problem of Undercriminalisation?" in R. Duff and others (eds), *The Boundaries of the Criminal Law* (Oxford: Oxford University Press, 2010), pp.59-87; A. Duff and S. Marshall, "How Offensive Can You Get?" A. in von Hirsch and A. Simester (eds), *Incivilities: Regulating Offensive Behaviour* (Portland: Hart Publishing, 2006), pp.79-81. For a critique of hybrid interventions see: J. Henry and C. King, "Expediency, Legitimacy, and the Rule of Law: A Systems Perspective on Civil/Criminal Procedural Hybrids" (2017) *Criminal Law and Philosophy* Vol.11(4) 733-757.
- ²⁴ See: A. Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law* (Oxford: Hart Publishing, 2007), p.13. This was also affirmed through case law, such as *R v Curtis Braxton* [2004] EWCA Crim 1374 and *R v Tripp* [2005] EWCA Crim 2253.
- ²⁵ D. Stephen, "The Responsibility of Respecting Justice: An Open Challenge to Tony Blair's Successors" in P. Squires (ed), *ASBONATION: The Criminalisation of Nuisance* (Bristol: The Policy Press, 2008), pp.321-322.
- ²⁶ This is also true of other civil preventive orders. See, for example, James and Pearson's analysis of the football banning orders: M. James and G. Pearson, "30 years of Hurt: The evolution of Civil Preventive Orders, Hybrid Law, and the Emergence of the Super-Football Banning Order" (2018) *Public Law* 44.
- ²⁷ D. Stephen, fn.25 above, pp.321-322.
- ²⁸ See, for example, the case of Alexander Muat who was given an ASBO which prohibited him (amongst other things) from making sarcastic comments. See: BBC, 'Anti-social OAP Faces Jail' (2003) available from: <http://news.bbc.co.uk/1/hi/england/merseyside/3087007.stm> [accessed 2 July 2018].
- ²⁹ P. Ramsay, "What is Anti-social Behaviour?" (2004) *Criminal Law Review* 908, 911-912.
- ³⁰ Ramsay contends that what was in fact criminalised through the ASBO's second limb was the perpetrator's failure to reassure society that they do not pose any risk to their security. Ramsay's argument seems theoretically reasonable, but in effect the ASBO's hybrid nature provided the means to criminalise behaviour which appeared to be part of everyday human interaction. See: P. Ramsay, *The Insecurity State* (Oxford: Oxford University Press, 2012), pp.45-49.
- ³¹ Since the main focus of the empirical study was the injunction rather than the CBO, this article will pay particular attention to the ASBO. It is worth noting though that 'the CBO is open to many of the objections against the ASBO'. See: A. Ashworth, *Sentencing and Criminal Justice*, 6th ed. (Cambridge: Cambridge University Press, 2015), p.387.
- ³² Section 1C of the 1998 Act.
- ³³ A. Ashworth, fn.31 above, p.26.
- ³⁴ Section 1(10) of the 1998 Act.
- ³⁵ As Hoffman and MacDonald contend, the move to a purely civil response would also address a number of procedural, evidential and human rights challenges posed by the ASBO. See: S. Hoffman and S. MacDonald, "Should ASBOs be Civilised?" (2010) *Criminal Law Review* 457. For a critique, of the proposed reform see: P. Ramsay, "Substantively Uncivilised ASBOs" (2010) *Criminal Law Review* 761.
- ³⁶ House of Commons, fn.5 above, para.13.

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- ³⁷ Home Office, *Anti-social Behaviour, Crime and Policing Act 2014: Reform of Anti-social Behaviour Powers – Statutory Guidance for Frontline Professionals* (Home Office, 2017), p. 26.
- ³⁸ Home Office, fn.37 above, p. 26.
- ³⁹ See: Home Office, fn.37 above, p. 26. The blending of civil and criminal procedural and evidential rules is not a new phenomenon in this area of law. Although in *R. (on the application of McCann) v Manchester Crown Court* [2002] UKHL 39, the House of Lords held that the ASBO was a civil order, it was noted that the court examining an application should have been convinced beyond reasonable doubt that ‘the defendant has acted in an anti-social manner’ (para. 37).
- ⁴⁰ Section 4 of the 2014 Act.
- ⁴¹ Section 4(1) of the 2014 Act.
- ⁴² Section 9(1) of the 2014 Act.
- ⁴³ Section 10 of the 2014 Act.
- ⁴⁴ Section 22(3) of the 2014 Act.
- ⁴⁵ Section 1C(2)(a) of the 1998 Act.
- ⁴⁶ Section 1C(2)(b) of the 1998 Act.
- ⁴⁷ Section 22(3) of the 2014 Act.
- ⁴⁸ See: A. Edwards and G. Hughes, “Resilient Fabians? Anti-Social Behaviour and Community Safety work in Wales” in P. Squires (ed), *ASBONATION: The Criminalisation of Nuisance* (Bristol: The Policy Press, 2008), pp. 67-68.
- ⁴⁹ R. Matthews and others, *Assessing the Use and Impact of Anti-Social Behaviour Orders* (Bristol: The Policy Press, 2007), p.4.
- ⁵⁰ Home Office, fn.10 above, p. 7.
- ⁵¹ Section 1(3) of the 2014 Act.
- ⁵² Section 2(1)(b) of the 2014 Act.
- ⁵³ Section 2(1)(a) and 2(1)(c) of the 2014 Act respectively.
- ⁵⁴ House of Commons, fn.5 above, para.13.
- ⁵⁵ The findings presented here were obtained as part of an empirical study which investigated whether the implementation of the ASB measures, especially the new injunction, resulted in the indirect criminalisation of certain kinds of behaviour.
- ⁵⁶ It is worth noting that the injunction entered into force in March 2015.
- ⁵⁷ Local practitioners were primarily ASB officers working within local Community Safety Units and Housing Associations.
- ⁵⁸ This study deliberately focused on exploring perspectives from police officers and local practitioners, rather than those subject to the ASB measures. This was due to the working definition of criminalisation formulated for the purposes of this study, which dictated that the implementation of these measures should have been examined from the perspective of local enforcement agents.
- ⁵⁹ See, for instance: P. Squires and D. Stephen, “Rethinking ASBOs” (2005) *Critical Social Policy* Vol.25, 517.
- ⁶⁰ M. Israel and I. Hay, “Research Ethics in Criminology” in D. Gadd, S. Kardstedt, and S. Messner (eds), *The Sage Handbook of Criminological Research Methods* (London: Sage, 2012), pp.504-505.
- ⁶¹ The process of identifying potential locations was based on the findings from the Crime Survey for England and Wales regarding ‘the percentage of adults aged 16 and over who have witnessed/experienced anti-social behaviour by police force area, in the year ending December 2013’. See: Office for National Statistics, *Experiences of Anti-social Behaviour by Police Force Area, English Regions and Wales, year ending December 2013 CSEW* (London: Office for National Statistics, 2014).
- ⁶² According to the Office for National Statistics, in the year ending in December 2013, across England and Wales on average 26.78 per cent of people aged 16 and above experienced and/or witnessed some kind of ASB between December 2012 and December 2013. Site A was chosen because the percentage of adults experienced and/or witnessed ASB was significantly higher than the average national. Conversely, Site B was very close to the national average. See Office for National Statistics, fn.61 above.
- ⁶³ M. Patton, *Qualitative Research and Evaluation Methods*, 3rd ed (California: Sage, 2002), pp.234-235.
- ⁶⁴ A. Bryman, *Social Research Methods* (Oxford: Oxford University Press, 2016), pp.452-453.
- ⁶⁵ J. Green and others, “Generating Best Evidence from Qualitative Research: The Role of Data Analysis” (2007) *Australian and New Zealand Journal of Public Health* Vol. 31(6) 545-550.
- ⁶⁶ R. Bachman and R. Schutt, *The Practice of Research in Criminology and Criminal Justice*, 6th ed (California: Sage, 2016), pp.418-419.
- ⁶⁷ L. Webley, ‘Qualitative Approaches to Empirical Research’ in P. Cane and H. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2012), pp.941-942.
- ⁶⁸ The remaining findings of this study will be presented in a companion article which focuses primarily on the procedure followed by local enforcement agents after they are notified about a potential incident of ASB.
- ⁶⁹ L. Koffman, fn.8 above, 611-612.

⁷⁰ Being disorder in a public space whilst drunk does, however, constitute an offence under section 91 of the Criminal Justice Act 1967.

⁷¹ Home Office, *Putting Victims First: More Effective Responses to Anti-Social Behaviour* (Home Office, 2012), para. 1.3.

⁷² Home Office, fn.71 above, p.1.

⁷³ Home Office, fn.71 above, p.3.

⁷⁴ An illustrative example is the case of Fiona Pilkington. See fn.9 above.

⁷⁵ Home Office, fn.71 above, p.3.

⁷⁶ M. Duggan and V. Heap, *Administating Victimisation: The Politics of Anti-social Behaviour and Hate Crime Policy* (Basingstone: Palgrave Macmillan, 2014), p.110.

⁷⁷ D. Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: The University of Chicago Press), p.143.

⁷⁸ An evaluation of the proposed code of practice is provided below.

⁷⁹ S. Lewis and others, fn.8 above, 1237-1238.

⁸⁰ A. von Hirsch, *Censure and Sanctions* (New York: Oxford University Press, 1993), p.12.

⁸¹ Ministry of Justice, *Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics – England and Wales 2013* (Ministry of Justice, 2014).

⁸² A. Crawford, fn.15 above, 816.

⁸³ S. Lewis and others, fn.8 above.

⁸⁴ Home Office, fn.37 above, p. 19.

⁸⁵ A. Crawford and others, “It ain’t (just) what you do, it’s (also) the way that you do it: The Role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People” (2016) *European Journal on Criminal Policy and Research* 3.

⁸⁶ For more on the challenges posed by paternalistic interventions see: B. Gert and C. Culver, “Paternalistic Behaviour” (1976 *Philosophy & Public Affairs* Vol.6(1) 45–57.

⁸⁷ The Home Office has recently published its revised statutory guidelines (see fn.37 above) regarding the implementation of the ASB measures. What is proposed here, is not to disregard these guidelines. Instead, is to incorporate within the existing guidelines mechanisms through which the misuse of these measures can be prevented.